

## REMARKS

This Amendment is submitted in response to the final Office Action mailed on July 19, 2006. A petition for a one month extension of time is submitted herewith. The Director is authorized to charge \$120.00 for the petition for extension of time and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-489 on the account statement.

Claims 1-9 and 11-30 are pending in this application. Claims 27-29 were previously withdrawn. Claim 10 was previously canceled. In the Office Action, Claims 1-9, 11-14, 17-18, 20, 26 and 30 are rejected under 35 U.S.C. §102, Claims 15-16 and 19 are rejected under 35 U.S.C. §103 and Claims 21-25 are objected to as being dependent upon a rejected base claim. In response, Claims 1 and 26 have been amended, Claims 11 and 12 have been canceled without prejudice or disclaimer in view of same, Claims 21-25 have been rewritten in independent form and Claims 31-35 have been newly added. These amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-9, 11-14, 17-18, 20, 26 and 30 are rejected under 35 U.S.C. §102 as anticipated by U.S. Patent Publication No. 2003/0033938 to Halliday et al. ("*Halliday*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Independent Claims 1 and 26 have been amended to recite, in part, that the foam conditioning conduit is free of an air inlet downstream of the restricted channel and that the gas is contained in the container portion of the device. The amendments as discussed above are fully supported in the specification, for example, on page 9, lines 17-25. Claim 30 recites, in part, that the gas is introduced upstream of the restriction channel. In contrast, Applicants respectfully submit that *Halliday* fails to disclose or suggest every element of the present claims as currently amended.

*Halliday* fails to disclose or suggest that a foam conditioning conduit is free of an air inlet downstream of a restriction channel and that gas is contained in a container portion of a cartridge as required, in part, by Claims 1 and 26. *Halliday* also fails to disclose or suggest that the gas is introduced upstream of the restriction channel as required, in part, by Claim 30. For example,

the present invention provides, in part, a capsule comprising a foam conditioning system that includes a restriction channel followed by a deceleration channel or chamber. The gas is introduced upstream of the restriction channel. The restriction channel is preferably configured to sheer the flow for producing gas bubbles that can be, for example, smaller than the maximum size and foaming the food product to produce foam therein. The gas necessary to form bubbles is already added to the fluid mixture before the restriction channel and not after the restriction as in *Halliday*. The restriction channel, for example, controls the size of the bubbles passing therethrough.

In contrast, *Halliday* teaches adding air after the restriction hole 16 that leads to an expansion chamber 17. *See, Halliday*, page 3, paragraphs 47-48 and Figure 1. *Halliday* clearly teaches the chamber 17 into which the jet of beverage is delivered is at atmospheric pressure and is connected to an air inlet area 18 by means of an elongate passage 19. Chamber 17 acts as an expansion chamber and, as the pressure of the jet of beverage is reduced, air is incorporated into the beverage via the air passage 19. The jet of beverage issuing through restriction hole 16 impinges on a surface 20 which is positioned in the beverage flow path. The impingement of the jet of beverage on grooves 21 of the surface 20 assists in causing turbulent motion of the beverage and the incorporation of air therein as a plurality of discrete bubbles. As a result, the mixing chamber 17 is meant to be the expansion chamber and is positioned downstream of the restriction hole or nozzle.

In all of the embodiments, *Halliday* teaches adding air after the restriction hole or nozzle that leads to the expansion chamber. *See, Halliday*, Figures 1-7. Consequently, *Halliday* is entirely directed to the foam being formed after the restriction hole by effect of air being added into the expansion chamber and not before or in the restriction hole itself. This difference is importance because *Halliday* does not teach or suggest controlling the bubble size through a restriction channel having a cross-section sufficiently small and of sufficient length for feeding bubbles that are smaller than a preselected maximum bubble size as currently claimed.

Further, with regard to the Examiner's assertion that "the operation of a device is merely intended and fails to structurally limit a claim," Applicants respectfully disagree with respect to method Claim 30. *See, Office Action*, page 4. In contrast, a process or method claim is patentable in and of itself, there being no requirement that a structure be disclosed in a method claim. Claim 30 of the present invention recites, in part, a method for preparing a whipped food.

The claim focuses on the way the whipped food is prepared and is not directed toward structural limitations of a device used to prepare the whipped food. Therefore, Applicants believe that the rejection of Claim 30 is improper and should be withdrawn.

For at least the reasons discussed above, Applicants respectfully submit that independent Claims 1, 26 and 30 and Claims 2-9, 13-14, 17-18 and 20 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited reference.

Accordingly, Applicants respectfully request that the rejection of Claims 1-9, 13-14, 17-18, 20, 26 and 30 under 35 U.S.C. §102 be withdrawn.

Claims 15-16 and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Halliday*. Applicants respectfully submit that the patentability of Claim 1 as previously discussed renders moot the obviousness rejection of Claims 15-16 and 19 that depend from Claim 1. In this regard, the cited art fails to teach or suggest the elements of Claims 15-16 and 19 in combination with the novel elements of Claim 1.

Claims 21-25 have been objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. *See*, Office Action, page 3. In response, Applicants have added new Claims 31-35. Claim 31 essentially includes the claimed subject matter as defined in independent Claim 1 and dependent Claims 20 and 21; Claim 32 essentially includes the subject matter as defined in independent Claim 1 and dependent Claims 20-22; Claim 33 essentially includes the subject matter as defined in independent Claim 1 and dependent Claims 20-23; Claim 34 essentially includes the subject matter as defined in independent Claim 1 and dependent Claims 20-22 and 24; and Claim 35 essentially includes the subject matter as defined in independent Claim 1 and dependent Claims 20-22 and 24-25. Accordingly, Applicants respectfully submit that new Claims 31-35 should be allowed.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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